REMARKS

This application has been reviewed in light of the FINAL REJECTION mailed February 20, 2008. Reconsideration of this application in view of the below remarks is respectfully requested. Claims 2, 3, 5, 8 and 10 are pending in the application with Claims 2, 3, 5 and 10 being in independent form.

I.   Rejection of Claims 2, 3, 5, 8 and 10 Under 35 U.S.C. § 112, First Paragraph

Claims 2, 3, 5, 8 and 10 are rejected under 35 U.S.C. § 112, first paragraph for allegedly failing to comply with the written description requirement. Specifically, the Examiner contends that the specification fails to adequately describe a separate maximum transmission rate calculated as each channel's full transmission rate capability.

However, full support for a separate maximum transmission rate calculated as each channel's full transmission rate capability is provided in the disclosure as originally filed. For example, pages 21 and 22 provide disclosure of "...[T]he maximum rate information for each channel (CH1, CH2, CHn), which were determined, respectively, in the above-described maximum rate control information determining device 204, is input to the variable rate communication path coding devices 215, 225 and 235, and here, the maximum rate information is inserted into a predetermined position of an information header section in a transmission format..." Moreover, Applicant's disclosure recites: "...[T]he system informs each user of the maximum rate of each channel..." (See: page 26, lines 8 – 9).

Accordingly, Applicant respectfully requests withdrawal of the rejection with respect to Claims 2, 3, 5, 8 and 10 under 35 U.S.C. § 112, first paragraph.

II. Rejection of Claims 2, 3, 5, 8 and 10 Under 35 U.S.C. § 103(a)

Claims 2, 3, 5, 8 and 10 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 5,914,950 issued to Tiedemann Jr. et al. in view of U.S. Patent No. 5,825,761 issued to Tanaka et al.

Tiedemann Jr. et al. teaches a method of assigning a maximum scheduled transmission rate to a base station. Specifically, Tiedemann Jr. et al. provides only one maximum rate that is applied to all transmission channels.

As disclosed by Tiedemann Jr. et al. with reference to FIG. 8, Channel scheduler 12 selects the scheduled user on the priority list having the highest priority at step 216. The cells supporting this user are identified and listed in the active member set of the user. For each of the listed cells of the active member set, the channel scheduler 12 calculates the maximum supportable transmission rate for the user in step 218. (See: col. 11, lines 32-41).

To ensure that the reverse link capacity allocated to a remote station 6 for a scheduled task can be supported by each cell listed in the active member set, channel scheduler 12 selects the minimum transmission rate from the list of maximum supportable transmission rates at step 220. (See: col. 11, line 65 through col. 12, line 4). The selected minimum transmission rate is defined as the maximum scheduled transmission rate. Thus, in Tiedemann Jr. et al. the maximum scheduled transmission rate is not the actual maximum transmission rate of a given transmission channel, but rather the least common denominator for all the transmission channels at a given time.

Consequently, it is evident that in Tiedemann Jr. et al. this same maximum scheduled transmission rate is assigned to all of the plurality of transmission channels regardless of the channel's actual maximum transmission rate. Thus, each transmission channel disclosed in

Tiedemann Jr. et al. operates at the same transmission rate, regardless of whether a particular transmission channel is capable of a higher transmission rate.

The result of the Tiedemann Jr. et al. disclosed invention is a communications link that maintains a consistent transmission rate across all the transmission channels that may be used. However, unlike Applicant's claimed invention each transmission channel in Tiedemann Jr. et al. is not utilized at the fullest transmission rate capable.

The teachings of Tanaka et al. fail to overcome the above-identified deficiency as well. Namely, Tanaka et al. fails to disclose or suggest determining a maximum transmission rate for each of a plurality of transmission channels for a next scheduled transmission time slot for each said mobile station and notifying each mobile station of the determined maximum transmission rate of each of the plurality of transmission channels.

The Examiner is obliged to consider the reference as a whole. As such, the Examiner cannot pick and choose bits and pieces from the prior art reference, and rearrange the teachings in support of the rejection. Therefore, given the explicit disclosure in Tiedemann Jr. et al. that the channel scheduler selects the minimum transmission rate from the list of maximum supportable transmission rates and that the selected minimum transmission rate is defined as the maximum scheduled transmission rate, Tiedemann Jr. et al., taken alone or in any proper combination with Tanaka et al., fails to disclose or suggest the features recited in Applicant's claims.
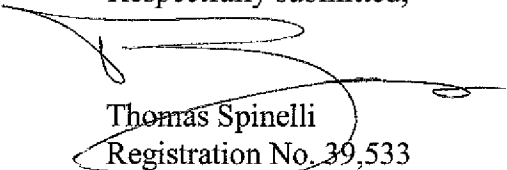
Accordingly, Applicant respectfully requests withdrawal of the rejection with respect to Claims 2, 3, 5, 8 and 10 under 35 U.S.C. § 103(a) over Tiedemann Jr. et al. in view of Tanaka et al.

CONCLUSIONS

In view of the foregoing remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 2, 3, 5, 8 and 10 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicant's undersigned attorney at the number indicated below.

Respectfully submitted,

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